

FIRST DAY - JANUARY 9, 2002

LEGISLATIVE JOURNAL

NINETY-SEVENTH LEGISLATURE

SECOND SESSION

FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, January 9, 2002

PRAYER

The prayer was offered by Pastor Gary Fugman, First Presbyterian Church, Lyons, Nebraska.

PRESENTATION OF COLORS

Presentation of Colors by the Nebraska Army and Air National Guard.

ROLL CALL

Pursuant to the provisions of Article III, Section 10 of the Constitution of Nebraska, the Ninety-Seventh Legislature, Second Session of the Legislature of Nebraska, assembled in the George W. Norris Legislative Chamber of the State Capitol at the hour of 10:00 a.m., on Wednesday, January 9, 2002, and was called to order by President Heineman.

The roll was called and the following members were present:

Aguilar, Raymond	Engel, L. Patrick	Price, Marian L.
Baker, Thomas C.	Erdman, Philip	Quandahl, Mark
Beutler, Chris	Foley, Mike	Raikes, Ronald E.
Bourne, Patrick J.	Hartnett, D. Paul	Redfield, Pam
Brashear, Kermit	Hudkins, Carol L.	Robak, Jennie
Bromm, Curt	Janssen, Ray	Schimek, DiAnna R.
Brown, Pam	Jensen, Jim	Schrock, Ed
Bruning, Jon	Jones, James E.	Smith, Adrian
Burling, Carroll	Kremer, Bob	Stuhr, Elaine
Byars, Dennis M.	Kristensen, Doug	Suttle, Deborah S.
Chambers, Ernie	Kruse, Lowen	Synowiecki, John F.
Connealy, Matt	Landis, David M.	Thompson, Nancy
Coordsen, George	McDonald, Vickie D.	Tyson, Gene
Cudaback, Jim D.	Pedersen, Dwite	Vrtiska, Floyd P.
Cunningham, Douglas D.	Pederson, Don	Wehrbein, Roger R.
Dierks, Merton L.	Preister, Don	Wickersham, Bob

The following member was excused:

Maxwell, Chip

MOTION - Adopt Temporary Rules

Senator Hudkins moved that the rules, as now in our possession, be adopted for today only, Wednesday, January 9, 2002.

The motion prevailed.

RESIGNATION

November 20, 2001

Governor Mike Johanns
P.O. Box 94848
Lincoln, Nebraska 68509-4848

Dear Governor Johanns,

I hereby submit my resignation as Legislator of Legislative District 7 to take effect on the 27th of November, 2001.

Sincerely,
(Signed) John Hilgert
District 7

MESSAGE FROM THE GOVERNOR

December 21, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol
Lincoln NE 68509

Dear President, Speaker Kristensen and Members:

I hereby appoint John F. Synowiecki to fill the vacancy in the 7th Legislative District created by the resignation of Senator John Hilgert. This appointment will take effect January 7, 2002.

Sincerely,
(Signed) Mike Johanns
Governor

say/

GUBERNATORIAL APPOINTMENT

Greetings To All Who Shall See These Presents Know Ye, that I, Mike Johanns, on behalf of the State of Nebraska and as Governor, do hereby appoint John F. Synowiecki as Senator for Legislative District #7.

Reposing special trust in your ability, integrity and patriotism, I do authorize and empower you to discharge the duties of said appointment, according to law.

This appointment shall take effect on January 7, 2002, and continue until January 8, 2003, provided you shall satisfactorily perform all the duties imposed by law.

(Signed) Mike Johanns
Governor

(Signed) John A. Gale
Secretary of State

CERTIFICATE

State of Nebraska

United States of America,)
) ss.
State of Nebraska)

Department of State

I, John A. Gale, Secretary of State of the State of Nebraska do hereby certify that John F. Synowiecki has been appointed as a Member of the Nebraska Unicameral Legislature from the Seventh District for the unexpired term of John Hilgert. The term beginning January 7, 2002, shall continue until January 8, 2003, or such time as he shall satisfactorily perform all the duties imposed upon such officer by law, and until a successor is duly elected and qualified.

I further certify that the foregoing appointment was made by Governor Mike Johanns under the authority granted by the Constitution and by Section 32-566 of the Revised Statutes of Nebraska.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this Seventh day of January in the year of our Lord, two thousand and two.

(SEAL)

John A. Gale, Secretary of State

OFFICIAL OATH

STATE OF NEBRASKA)
) ss.
County of Douglas)

"I, John F. Synowiecki, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of

Nebraska, and will faithfully discharge the duties of Member of the Legislature, District Seven according to the best of my ability, and that at the election at which I was chosen to fill said office, I have not improperly influenced in any way the vote of any elector, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office, for any official act or influence (for any vote I may give or withhold on any bill, resolution, or appropriation)."*

(Signed) John F. Synowiecki

Subscribed in my presence and sworn to before me this 7th day of January, 2002.

(Signed) John A. Gale
Secretary of State

(SEAL)

*Constitution of the State of Nebraska, Article XV, Section One.
For Executive, Judicial Officers and Members of the Legislature.

CERTIFICATE

State of Nebraska

United States of America,)	
) ss.	Department of State
State of Nebraska)	

I, John A. Gale, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of the Official Roster of members of the Nebraska Unicameral Legislature elected or appointed to serve in the Ninety-Seventh Legislature, Second Session, 2002.

Further, I hereby certify that the members so listed on the Official Roster attached hereto are the duly elected or appointed members of the Unicameral Legislature in the State of Nebraska for the Ninety-Seventh Legislature, Second Session, 2002.

Finally, I hereby certify that all election returns, abstracts, canvass and appointment records with reference to said members are on file in the office of the Secretary of State and are a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this Eighth day of January in the year of our Lord, two thousand and two.

(SEAL)

John A. Gale, Secretary of State

DISTRICT/NAME	ELECTED
1 Floyd P. Vrtiska	November 7, 2000
2 Roger R. Wehrbein	November 3, 1998
3 Jon C. Bruning	November 7, 2000
4 Kermit Brashear	November 3, 1998
5 Don Preister	November 7, 2000
6 Pam Brown	November 3, 1998
7 John F. Synowiecki	Appointed January 7, 2002
8 Patrick J. Bourne	November 3, 1998
9 Chip Maxwell	November 7, 2000
10 Deborah S. Suttle	November 3, 1998
11 Ernie Chambers	November 7, 2000
12 Pam Redfield	November 3, 1998
13 Lowen Kruse	November 7, 2000
14 Nancy Thompson	November 3, 1998
15 Ray Janssen	November 7, 2000
16 Matt Connealy	November 3, 1998
17 L. Patrick Engel	November 7, 2000
18 Douglas D. Cunningham	November 7, 2000
19 Gene Tyson	November 7, 2000
20 Jim Jensen	November 3, 1998
21 Carol L. Hudkins	November 7, 2000
22 Jennie Robak	November 3, 1998
23 Curt Bromm	November 7, 2000
24 Elaine Stuhr	November 3, 1998
25 Ronald E. Raikes	November 7, 2000
26 Marian L. Price	November 3, 1998
27 DiAnna R. Schimek	November 7, 2000
28 Chris Beutler	November 3, 1998
29 Mike Foley	November 7, 2000
30 Dennis M. Byars	November 3, 1998
31 Mark Quandahl	November 7, 2000
32 George Coordsen	November 3, 1998
33 Carroll Burling	November 7, 2000
34 Bob Kremer	November 3, 1998
35 Raymond Aguilar	November 7, 2000
36 Jim D. Cudaback	November 3, 1998
37 Doug Kristensen	November 7, 2000
38 Ed Schrock	November 3, 1998
39 Dwite Pedersen	November 7, 2000
40 Merton L. Dierks	November 3, 1998
41 Vickie D. McDonald	Appointed August 10, 2001
42 Don Pederson	November 3, 1998
43 James E. Jones	November 7, 2000
44 Thomas C. Baker	November 3, 1998
45 D. Paul Hartnett	November 7, 2000
46 David M. Landis	November 3, 1998
47 Philip Erdman	November 7, 2000
48 Adrian Smith	November 3, 1998
49 Bob Wickersham	November 7, 2000

MESSAGES FROM THE GOVERNOR

November 19, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear President, Speaker Kristensen and Senators:

Contingent upon your approval, the following individual has been appointed
Director of Veterans Affairs.

APPOINTEE:

John A. Hilgert, 4116 S. 19th St, Omaha NE 68107

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

November 29, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individual has been appointed
to the Nebraska Transit and Rail Advisory Council.

APPOINTEE:

Gary A. Ruegg, 16314 Seward Circle, Omaha NE 68118

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

November 29, 2001

President, Speaker Kristensen

and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individuals have been reappointed as members of the Board of Emergency Medical Services.

APPOINTEES:

Robert Dunn, 1500 Brighton Ave, Lincoln NE 68506
Richard J. Sheehy, 1115 Oswego, Hastings NE 68901
Michael Westcott, M.D., 9742 Ascot Dr, Omaha NE 68114
Shawn Baumgartner, 1928 8th Ave, Scottsbluff NE 69361

The aforementioned names are respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

November 29, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individual has been appointed to the Dry Bean Commission.

APPOINTEE:

Kenneth L. Rhoades, 1097 Rd West P North, Big Springs NE 69122

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

November 29, 2001

President, Speaker Kristensen
and Members of the Legislature

State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individual has been appointed to the State Electrical Board.

APPOINTEE:

Richard L. Wolfe, 1300 Plum Ridge Rd, Lincoln NE 68527

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

November 29, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individual has been appointed to the Commission of Industrial Relations.

APPOINTEE:

Loren L. Lindahl, 942 Hackberry, Wahoo NE 68066

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

December 3, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individuals have been appointed to the Board of Public Roads Classifications and Standards.

APPOINTEES:

*Arthur Yonkey, RR 1 Box 172 A, Hickman NE 68372

*Gene Acklie, 1419 Ave O, Scottsbluff NE 69361

Alan D. Doll, 1320 Maple Dr, Blair NE 68008

Dean T. Lux, 741 Locust, North Bend NE 68649

The aforementioned names are respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

*Reappointment

December 4, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individual has been appointed to the Game and Parks Commission.

APPOINTEE:

William L. Grewcock, 2123 Mullen Rd, Omaha NE 68124

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

December 4, 2001

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Members:

Contingent upon your approval, the following individual has been appointed to the Nebraska Arts Council.

APPOINTEE:

Louise Bereuter, 1652 County Road Z, Cedar Bluffs NE 68015

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

say/

January 7, 2002

President, Speaker Kristensen
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Kristensen and Senators:

Please withdraw Lon Fields' name from confirmation to the State Emergency Response Commission due to his resignation.

Thank you.

Sincerely,
(Signed) Mike Johanns
Governor

say/

ATTORNEY GENERAL'S OPINIONS

Opinion #01038

DATE: November 27, 2001

SUBJECT: Status of the Nebraska State Board of Agriculture as a state agency or private corporation; application of various state statutes to that Board.

REQUESTED BY: Senator Don Pederson
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

You have requested our opinion on "a number of issues surrounding the

Nebraska State Fair Board," and you indicate, in your opinion request, that you anticipate introducing legislation in regard to those issues during the 2002 legislative session. We will separately set out and discuss each of your questions below. Several of your questions also include explanatory comments which we will include with the question.

QUESTION 1

Is the State Fair Board a private corporation or a state agency?

The territorial board was created in statute as a "body corporate," but this designation no longer exists in statute. The Nebraska Supreme Court ruled in 1984 that the current State Fair Board is a private corporation, but the board continues to receive benefits (state-owned fairground land and facilities rent free and appropriations/allocations from the general fund and the 309 funds) from the State of Nebraska, which is (sic) generally only available to state agencies.

The Nebraska State Board of Agriculture (commonly known as the State Fair Board)(hereinafter the "Board") has existed since legislation creating the Board was passed in 1858 when Nebraska was still a territory. ***Crete Mills v. Nebraska State Board of Agriculture***, 132 Neb. 244, 271 N.W. 684 (1937)(containing a discussion of the legislation creating the Board over time). The current statute creating the Board, which has remained unchanged since 1983, states:

There shall be held prior to April 1 of each year, a meeting of the State Board of Agriculture, together with the president of each county society, or delegate therefrom duly authorized, who shall for the time being be ex officio members of the State Board of Agriculture, for the purpose of deliberating and consulting as to the wants, prospects, and conditions of the agricultural interests throughout the state. Such meeting shall be held in every odd-numbered year at the capital of the state, and in every even-numbered year at such location as the board may determine. At such annual meeting the several reports from the subordinate societies shall be delivered to the president of the board. The president and delegates shall at this meeting elect suitable persons to fill all vacancies in the board. The president shall also have the power to call meetings of the board whenever he or she may deem it expedient. The state fair shall be held at or near the city of Lincoln, in Lancaster County, under the direction and supervision of the State Board of Agriculture, upon the site and tract of land, selected and now owned by the state for that purpose and known as the state fairgrounds. The board may, at its discretion, hold or dispense with the holding of the fair, in any year.

Neb. Rev. Stat. § 2-101 (1997). In addition, Neb. Rev. Stat. § 2-102 (1997) provides:

The officers of the board shall consist of a president, vice president,

secretary, and treasurer, and such others as the board may deem necessary. They shall be elected at the annual meeting of the board, and shall hold their offices for the period of one year and until their successors are elected and qualified. The board shall determine by lot the time that each member shall serve so that the term of service of one-half of the members shall expire annually on the day of the annual meeting.

With respect to your first question regarding the nature of the Board, the Nebraska Supreme Court indicated in *State ex rel. Marsh v. Nebraska State Board of Agriculture*, 217 Neb. 622, 350 N.W.2d 535 (1984), that the Board was a private business association as contemplated by the Uniform Disposition of Unclaimed Property Act, rather than a public corporation under that Act. More significantly, in *Crete Mills v. Nebraska State Board of Agriculture*, 132 Neb. 244, 271 N.W. 684 (1937), the court held that the Board was "essentially a private corporation" which was not immune from suit under the doctrine of sovereign immunity. *Id.* at 256, 271 N.W. 689. In *Crete Mills*, the court based its holding, in part, upon the fact that the Board was a self-perpetuating body whose officers were selected by the Board rather than by the political officers or electors of the state, and upon the fact that the Board was not required to abide by various funding procedures required of state agencies by the Nebraska Constitution. The court stated:

It is obvious, therefore, that neither the inherent nature of the Nebraska state board of agriculture, the manner in which its perpetuity is accomplished, the character of the business carried on, the method of its performance, nor the purpose sought to be attained, in any manner determines its character to be that of a public governmental agency, to which the principle of exemption from suit without assent of the state is applicable.

Crete Mills at 250, 251, 271 N.W. 687. The factors that influenced the court in the *Crete Mills* case still exist, and consistent with that decision, we have indicated in previous opinions that, in our view, the Board is neither a state agency nor a political subdivision of the State of Nebraska. Op. Att'y Gen. No. 99038 (August 19, 1999); Op. Att'y Gen. No. 91087 (November 21, 1991); Op. Att'y Gen. No. 47 (March 27, 1985); 1977-78 Rep. Att'y Gen. 229 (Opinion No. 151, dated December 20, 1977). As a result, in response to your first question, we believe that the Board is a private corporation and not a state agency.

QUESTION 2

Has the Nebraska Legislature enacted legislation that provides "special or exclusive privileges" to a corporation, association, or individual, in violation of the Nebraska Constitution, Art. III, Section 18? *Neb. Rev. Stat. Sec. 77-2704.16, exempts the board, by name, from paying state sales tax.*

In our opinion to Senator Beutler dated December 24, 1985, we indicated that it has been and continues to be our policy that we will not issue legal opinions to state legislators concerning the constitutionality of existing statutes. Op. Att'y Gen. No. 157 (December 24, 1985). That policy is based upon the constitutional function of the Legislature in enacting rather than enforcing legislation, and also upon the practical consideration that we may be called upon to defend the constitutionality of existing laws. In the present instance, it appears to us that a response to your second question would involve us in offering an opinion on the constitutionality of existing legislation. Therefore, for the reasons set out in our opinion to Senator Beutler in 1985, we must respectfully decline to do so. However, in the event that you draft proposed legislation in this area during the next legislative session, we will respond to specific questions regarding that legislation at that time.

QUESTION 3

If the board is considered a private corporation, does a conflict exist between the provisions and the general fund appropriations and 309 fund allocations provided to the board? *The constitution also prohibits the state from giving or loaning its credit to aid any individual, association or corporation.*

The focus of your third question is apparently art. XIII, § 3 of the Nebraska Constitution which provides that "[t]he credit of the state shall never be given or loaned in aid of any individual, association, or corporation" We gather that you question the propriety of state general fund appropriations and 309 fund allocations to a private entity such as the Board.¹

There are two aspects to an analysis of state expenditures under art. XIII, § 3, and the first aspect involves the state's credit. In that regard, the purpose of art. XIII, § 3 is to prevent the state or any of its political subdivisions from extending the state's credit to private enterprise. *Callan v. Balka*, 248 Neb. 469, 536 N.W.2d 47 (1995). "It is designed to prohibit the state from acting as a surety or guarantor of the debt of another." *Haman v. Marsh*, 237 Neb. 699, 718, 467 N.W.2d 836, 850 (1991). It applies to the State and all of its political subdivisions. *State ex rel. Beck v. City of York*, 164 Neb. 223, 82 N.W.2d 269 (1957).

The Nebraska Supreme Court has established a three-part test for

¹ From materials provided by your staff, we understand that your reference to "309 fund allocations" is a reference to the state's Deferred Building Renewal Act under which state funds collected primarily from cigarette taxes are used for the renewal and maintenance of state-owned buildings. Neb. Rev. Stat. §§ 81-173 to 81-191.01 (1996, Cum. Supp. 2000). That Act originated in 1977 Neb. Laws LB 309.

determining whether an expenditure violates the credit aspect of art. XIII, § 3 of the Nebraska Constitution. To establish a violation of that constitutional provision, it must be shown that (1) the credit of the state (2) is given or loaned (3) in aid of any individual, association, or corporation. **Callan**, 248 Neb. at 476, 536 N.W.2d at 51; **Haman**, 237 Neb. at 719, 467 N.W.2d at 850. In that context, there is a distinction between the loaning of state funds and the loaning of the state's credit. The loan of state funds places the state in the position of a creditor, and the loan of state's credit places the state in the position of debtor. **Callan**, 248 Neb. at 476, 536 N.W.2d at 51; **Haman**, 237 Neb. at 719, 720, 467 N.W.2d at 850. In addition, the prohibition against the pledge of the state's credit does not hinge upon whether the expenditure at issue achieves a "public purpose" when the pledge benefits a private individual, association or corporation. **Haman**, 237 Neb. at 722, 467 N.W.2d at 852. Instead, the key focus of art. XIII, § 3 in that context is whether the state stands as a creditor through the expenditure of its funds, or as a debtor by the extension of credit in the interest of private parties. **Callan**, 248 Neb. at 479, 536 N.W.2d at 53; **Haman**, 237 Neb. at 718, 722, 467 N.W.2d at 852. (1991).

When the state expends general fund appropriations or 309 fund allocations for the benefit of the Board, it appears to us that the state acts as a creditor to the Board with respect to those expenditures, and not a debtor. Under those circumstances, the state is not in the position of debtor to the Board, nor is the state in the position of surety or guarantor for the Board's debt. As a result, we do not believe that the appropriation of general fund monies or 309 fund allocations to the Board involves lending the credit of the state, and for that reason, such appropriations do not violate the credit aspect of art. XIII, § 3 of the Nebraska Constitution.

An analysis under art. XIII, § 3 does not end at that point, however. "Closely related to the prohibition against the giving or lending of the state's credit . . . Is the principle of law that public funds cannot be expended for private purposes." **Haman**, 237 Neb. at 722, 467 N.W.2d at 851. That constitutional principle involves the expenditure of state funds in contrast to the extension of credit. *Id.* While the state constitution contains no express provision against expending public funds for private purposes, that principle "is grounded on the 'fundamental concepts of our constitutional system.' " **State ex rel. Douglas v. Thone**, 204 Neb. 836, 842, 286 N.W.2d 249, 252 (1979)(quoting **Beck v. City of York**, 164 Neb. 223). That principle also emanates from art. XIII, § 3. **Haman**, 237 Neb. at 722, 467 N.W.2d at 851.

There is no hard and fast rule for ascertaining whether a proposed expenditure of public funds is for a public purpose. The Nebraska Supreme Court has indicated that "[a] public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all the inhabitants." **Platte Valley Public Power & Irrigation District v. County of Lincoln**, 144 Neb. 584, 589, 14 N.W.2d 202, 205 (1944). The court has also indicated that it is for the Legislature to determine in the first instance what is and what is not a

public purpose. *State ex rel. Douglas v. Thone*, 204 Neb. 836, 286 N.W.2d 249 (1979).

In the present case, the Board has existed by statute since territorial days, and is statutorily charged with supervising and directing the operation of the Nebraska State Fair on the State Fairgrounds owned by the State of Nebraska. Given those duties and the Board's close ties to state government over the years, we cannot say that there clearly is no public purpose involved in general fund appropriations to the Board or in 309 fund allocations to the Board for the renewal and maintenance of state-owned buildings on the state fairgrounds. Consequently, we do not believe that such appropriations or allocations violate the second aspect of art. XIII, § 3 of the Nebraska Constitution.

QUESTION 4

If the Board is considered a state agency and since they receive state funds, are they bound by state laws in regard to open meetings laws and hiring practices?

1. Public Meetings Statutes

The Nebraska Public Meetings Statutes, Neb. Rev. Stat. §§ 84-1408 through 84-1414 (1999, Cum. Supp. 2000), require public bodies in Nebraska to publish notice of their meetings, hold their meetings in public, and generally conduct their business in full view of the citizens of the state. Under those statutes, a "public body" subject to the meetings provisions includes "all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies, now or hereafter created by the Constitution of Nebraska, statute, or otherwise pursuant to law." Neb. Rev. Stat. § 84-1409 (1)(c) (1999). Since the Board is created by statute, the definition of public body in § 84-1409 (1)(c), together with the fact that the Board receives state monies, would lend some credence to the notion that the Board is subject to the Public Meetings Statutes. On the other hand, the Nebraska Supreme Court clearly indicated in the *Crete Mills* case that the Board is a private corporation and not a state agency, and the Public Meetings Statutes normally apply to governmental bodies, and not to private organizations. In the face of that uncertainty, *Nixon v. Madison County Agricultural Society*, 217 Neb. 37, 348 N.W.2d 119 (1984) is helpful.

In the *Nixon* case, the Nebraska Supreme Court considered whether county agricultural societies in Nebraska were subject to the Public Meetings Statutes. The court noted that such societies were organized under the Nebraska Statutes, and that such societies could obtain the proceeds of a tax to be levied by the county board.² The court then stated:

² A review of the statutes cited by the Nebraska Supreme Court in the *Nixon* case from the 1982 Cumulative Supplement to the Nebraska Statutes indicates that, under § 2-201, a county board was required to levy a tax for a

Although a county agricultural society resembles a private corporation in some respects, the statutory provisions which grant such a society the right to receive support from the public revenue give it a public character.

Nixon, 217 Neb. at 39, 348 N.W.2d at 119. On the basis of that right to receive support from the public revenue, the court then held that a county agricultural society was subject to the Public Meetings Statutes as a public body under § 84-1409 (1) (c). Consistent with the *Nixon* case, we have also indicated in previous opinions that public bodies statutorily characterized as "public corporations" or public bodies with a right to receive public funds were subject to the Public Meetings Statutes. Op. Att'y Gen. No. 97012 (February 14, 1997)(Hospital Authority which was a "public corporation" and which received funds from a city was subject to Public Meetings Statutes); Op. Att'y Gen. No. 219 (July 23, 1984)(County Extension Service which had a right to county funds under certain circumstances was subject to Public Meetings Statutes).

The present situation involving the Board is distinguishable, however, from the situation before the court in the *Nixon* case. For one thing, while the Board does receive general fund monies and 309 fund allocations, it has no right to levy a tax for its support and no statutory right to public revenue. Moreover, the Nebraska Supreme Court has clearly indicated that the Board is a private corporation. The Board's lack of any statutory right to public revenue, coupled with its status as a private corporation, ultimately lead us to believe that, while the issue presents a close question, the Board is not a public body which is subject to the Public Meetings Statutes. Obviously, if that result is of concern to you, you may wish to consider remedial legislation.

2. State Hiring Practices

We are unsure what you mean by "hiring practices" in connection with your Question 4. However, since the Board is a private corporation and not a state agency, we do not believe that the Board is subject to the provisions of the State Personnel System. In that regard, we indicated in a previous opinion that we did not believe that the Governor would have authority over a Board employee for purposes of extending that employee's accumulated leave under the State Personnel System. Op. Att'y Gen. No. 47 (March 27, 1985). That opinion was based upon the fact that the Board is not a state agency under the *Crete Mills* decision.

county agricultural society under certain circumstances. That tax was assessed, levied and collected as with other county taxes.

QUESTION 5

Although the board has autonomy in managing the fair and carrying out its other responsibilities, the Legislature remains the ultimate authority over the board. If the board is considered a state agency, is there a conflict of interest with two state senators currently serving on the state fair board?

Again, we are not entirely sure what you mean by the term "conflict of interest" in your final question. If that reference is in regard to the Conflicts of Interest section of the Nebraska Political Accountability and Disclosure Act, Neb. Rev. Stat. §§ 49-1493 to 49-14,104 (1998, Cum. Supp. 2000), we do not believe that legislators who are also members of the Board are subject to conflict of interest concerns with respect to decisions which they make as members of the Board, since the Board is a private corporation and not a state agency. On the other hand, it seems to us that members of the Legislature who are also Board members with an interest in the Board's affairs could be subject to provisions of the Accountability and Disclosure Act with respect to their duties as legislators, since a number of the provisions of that Act require disclosures regarding businesses with which a public official is associated. *See, e.g.*, Neb. Rev. Stat. § 49-1496 (Cum. Supp. 2000)(Statement of financial interests to be filed by public officials must include information about "any business with which the individual was associated.") We suggest that any specific questions in this area be referred to the Accountability and Disclosure Commission, the agency with enforcement authority under the Act.

To the extent that your use of the term "conflict of interest" implicates separation of powers questions under art. II, § 1 of the Nebraska Constitution, we have previously indicated in an opinion to Senator Schellpeper that, in our view, he could serve on the Board and in the Legislature simultaneously without violating the Nebraska Supreme Court's decision in *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991) or art. II, § 1 of the Nebraska Constitution. Op. Att'y Gen. No. 91087 (November 21, 1991). That latter opinion was also based upon the notion that the Board is a private corporation and not a state agency.

Sincerely yours,
DON STENBERG
Attorney General

(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick J. O'Donnell
Clerk of the Legislature
05-01-21

Opinion #01040

DATE: December 17, 2001

SUBJECT: Constitutionality Of Legislation Which Would Terminate Current Terms Of Office For Members Of The Nebraska Board Of Educational Lands And Funds And Create New Terms Of Office For Members Of That Board.

REQUESTED BY: Senator Tom Baker
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you state that it is your intention to "introduce legislation pertaining to the Nebraska Board of Educational Lands and Funds" during the upcoming legislative session. The purpose of that legislation will be "to establish new district boundaries [for election of members of the Board of Educational Lands and Funds] based upon the number of school land acres per county across the state." You also note that there are "currently five appointed members on the Board of Educational Lands and Funds." In that context, you ask: "[w]ould it be constitutional to appoint new board members once the new districts are determined thus eliminating current terms or would existing members be required to fill out their current terms?"

Article VII, § 6 of the Nebraska Constitution pertains to the Board of Educational Lands and Funds (the "Board"), and states:

No lands now owned or hereafter acquired by the state for educational purposes shall be sold except at public auction under such conditions as the Legislature shall provide. The general management of all lands set apart for educational purposes shall be vested, under direction of the Legislature, in a board of five members to be known as the Board of Educational Lands and Funds. The members shall be appointed by the Governor, subject to approval of the Legislature, with such qualifications and for such terms and compensation as the Legislature may provide.

The statutes dealing with the Board and school lands are found generally at Neb. Rev. Stat. §§ 72-201 through 72-269 (1996, Cum. Supp. 2000). Section 72-201 creates the qualifications for Board members and sets their term of office at five years. Section 72-201 also currently provides that four members of the Board shall be appointed from Nebraska's congressional districts as they existed on January 1, 1961, and that a fifth member of the Board shall be appointed from the state at large.

You have not provided us with any specific proposed legislation in connection with your opinion request. However, we assume, from the question which you posed to us, that your legislative bill would end the terms of office of current Board members as of a particular date. The bill would then create new terms of office, commencing at a particular date, for Board members appointed out of the new districts which you have described. For the reasons discussed below, we do not believe that such a proposal would violate the Nebraska Constitution.

The general rule with respect to change of the term for a public office is set out in 67 C.J.S. *Officers* § 70 (1978), which states:

The sovereign power creating an office may change its tenure in the absence of constitutional restriction, and such power may be exercised subject to constitutional limitations. *Accordingly, the legislature may change the term of an office during the term of an incumbent, even though the effect of the change is to curtail the unexpired term of an incumbent, and even though the power to appoint is given by the constitution to a local authority. However, this power is not available where the constitution fixes the duration of the term.*

(Emphasis added).

Nebraska cases appear to follow the general rule stated above. *Hamilton v. Foster*, 155 Neb. 89, 50 N.W.2d 542 (1951); *State ex rel. Comstock v. Stewart*, 52 Neb. 243, 71 N.W. 998 (1897); *Douglas County v. Timme*, 32 Neb. 272, 49 N.W. 266 (1891). In the *Stewart* case, which dealt with city council members in Lincoln, the court stated:

... " in the absence of any constitutional prohibition or affirmative provision fixing the term of office of any officer or his compensation, the legislature may change such term or compensation, and such change of term or compensation will apply as well to the officers then in office as to those to be thereafter elected." The same principle applies to the offices of councilmen. The official tenure of such officers is not fixed by the constitution, and hence may be shortened or terminated at the will of the legislature.

Stewart, 52 Neb at 255, 71 N.W. at 1002, 1003 (quoting *Douglas County v. Timme*, 32 Neb. at 275, 49 N.W. 267).

In the present instance, art. VII, § 6 of the Nebraska Constitution creates a Board of Educational Lands and Funds consisting of five members, and vests management of all lands set apart for educational purposes in that Board, under direction of the Legislature. We do not believe that those aspects of the Board can be altered by the Legislature through a statutory change. On the other hand, art. VII, § 6 also specifically allows the Legislature to provide for the terms of office and compensation of Board members. As a result, it appears to us that, under the authorities cited above, the Legislature could constitutionally end the

terms of office for current Board members at a particular date, while providing that new Board members out of new districts will commence new terms of office at a particular date.

Sincerely yours,
DON STENBERG
Attorney General
(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick J. O'Donnell
Clerk of the Legislature
05-14-21

Opinion #01041

DATE: December 26, 2001

SUBJECT: Nebraska Pork Industry Development Act, LB 803 -
Authority to Promulgate and Enforce Regulations, and
Constitutionality

REQUESTED BY: M.L. Dierks, Nebraska State Senator

WRITTEN BY: Don Stenberg, Attorney General
William R. Barger, Assistant Attorney General

You have requested the opinion of this office regarding the constitutionality of granting a nonprofit corporation certain powers under the Nebraska Pork Industry Development Act (hereinafter "the Act"). This bill, LB 803, as amended by AM 1079, purports to designate a state pork association for Nebraska pork producers and to describe this organization's duties and powers. Our analysis herein will focus solely on the version of LB 803 amended by AM 1079, as you requested.

You have posed two specific questions. First, you ask whether LB 803 § 9(3) properly delegates authority to promulgate and enforce rules and regulations to a nonprofit corporation which is not a state agency. Second, you ask whether, if the current scheme in LB 803 § 9(3) is improper, the legislature can grant the authority to promulgate and enforce rules and regulations to a state agency, while maintaining the authority to collect and spend pork checkoff funds within the nonprofit corporation.

The Act describes a recognized state association of pork producers for the purpose of accepting check off funds from the federal National Pork Board, and prescribes procedures by which the Nebraska pork industry may finance programs of pork promotion, research and information. LB 803 §§ 2 & 3. To remain consistent with recent changes to the federal pork promotion program administered by the federal Secretary of Agriculture, it is necessary

to establish a separate Nebraska board for administering checkoff funds which is distinct from the lobbying, candidate endorsement and member services formerly provided by the state association. LB 803 § 3(4). Formation of a nonprofit corporation to represent pork producers and administer checkoff funds, named the Nebraska Pork Industry Development Board (hereinafter "the Board"), is encouraged by the Act. LB 803 § 3(5) & § 4(1). The Nebraska Director of Agriculture would review documents submitted by any nonprofit corporation seeking to be the recognized state association, the Director would make a recommendation to the Governor, and the Governor would designate a single nonprofit corporation as the recognized state association. LB 803 §§ 7 & 5. The designated association would receive funds procured by the federal Pork Promotion, Research, and Consumer Information Act of 1985, or procured by the state through the Nebraska Pork Industry Development Act, if the federal act ceases to collect assessments. 7 U.S.C. § 4802(16), 7 U.S.C. § 4809(c), LB 803 §§ 10(1) & 12. The Board would have the powers and duties described in Section 9 of LB 803, including as relevant to your specific inquiries, the following authority:

"Sec. 9. The powers and duties of the board shall include the following:

...

(3) To adopt and promulgate such rules and regulations as are necessary to enforce the state act in accordance with the Administrative Procedure Act;"

I. NONPROFIT CORPORATION'S AUTHORITY TO PROMULGATE AND ENFORCE REGULATIONS

Your first question is whether § 9(3) of the Act properly delegates authority to promulgate and enforce rules and regulations to a nonprofit corporation which is not a state agency. Initially, we must briefly consider whether or not the nonprofit corporation is a state agency. The Nebraska Nonprofit Corporation Act describes the general powers granted to a nonprofit corporation. Neb. Rev. Stat. § 21-1928 (Reissue 1997). Nonprofit corporations may only be incorporated for the purposes described by statute, which include charitable, educational or agricultural purposes and commercial or trade associations. Neb. Rev. Stat. § 21-1927(b). There is no mention in the Nebraska Nonprofit Corporation Act that these corporations may promulgate or enforce rules and regulations upon non-stockholders. All powers granted to a nonprofit corporation are granted by the state through the Nebraska Constitution and the mentioned statutes. *Clark v. Lincoln Liberty Life Ins. Co.*, 139 Neb. 65, 69, 296 N.W. 449, 453 (1941), citing Neb. Const. art. XII, § 1.

A state agency is granted the authority to promulgate rules and regulations under the Administrative Procedures Act. Neb. Rev. Stat. 84-901 et. seq (Reissue 1999). A state agency includes boards, commissions, departments, officers, divisions and other administrative offices of the state government. Unless they are constitutionally created officers or agencies, agencies have

only that authority explicitly granted by statute. *F & T, Inc., v. Nebraska Liquor Control Com'n*, 7 Neb. App. 973, 981, 587 N.W.2d 700, 706 (1998). The Nebraska Supreme Court describes this authority:

The Legislature does have power to authorize an administrative or executive department to make rules and regulations to carry out an expressed legislative purpose, or for the complete operation and enforcement of a law within designated limitations.

Kwik Shop, Inc. V. City of Lincoln, 243 Neb. 178, 186, 498 N.W.2d 102, 108 (1993).

It does not appear that a nonprofit corporation can be considered a state agency, at least not for the purposes of promulgating and enforcing rules and regulations under the Administrative Procedures Act. State agencies which have received a specific grant of authority to promulgate rules and regulation are the only agencies which can utilize the Administrative Procedures Act. Neb. Rev. Stat. § 84- 901(1). The grant of authority to the legislature to create executive branch agencies in Neb. Const. art. III, § 1 is separate and distinct from the legislature's authority to provide for the existence of corporations in Neb. Const. art. XII, § 1. Many state statutes describe what a state agency is, but none of these mention nonprofit corporations as state agencies. See Neb. Rev. Stat. § 25-1802 (Reissue 1995) (awards fees and expenses in suits against state, and defines what state entities are subject to these suits); Neb. Rev. Stat. § 49-1424 (Reissue 1998) (defines governmental body for purposes of accountability and disclosure act) and Neb. Rev. Stat. § 81-2703 (Reissue 1999) (defines state agency for purposes of government effectiveness act).

We have examined a similar question regarding the constitutionality of a legislative delegation of rule making authority to a nonprofit corporation in a prior opinion of this office. In that opinion a nonprofit corporation, which would operate a one-call notification system under a proposed One-call Notification System Act, could not constitutionally be authorized to promulgate rules or regulations which would have any legal effect. Op. Att'y Gen. No. 92129 (December 22, 1992). We see no reason the Board, a nonprofit corporation, should be any different from the nonprofit corporation discussed in our prior opinion.

Considering all of the above authorities, in our opinion it is very likely that creating a nonprofit corporation to promulgate and enforce rules and regulations administering the Act, without the involvement of any governmental agency, would be an unconstitutional delegation of authority. Further, any such regulations purportedly promulgated by the Board would not be enforceable by the Board or any other entity.

II. NONPROFIT CORPORATION'S ABILITY TO ADMINISTER PORK CHECKOFF FUNDS

You further inquire whether the legislature can grant the authority to promulgate and enforce regulations to a state agency, if the LB 803 § 9 provisions delegating such authority to a nonprofit corporation are improper. Your question specifically asks if the Board can engage in the collection and expenditure of pork checkoff funds.

You mention the Nebraska Department of Agriculture as a potential state agency to administer the pork promotion program. Using the Department of Agriculture (hereinafter "the Department") as an example, in our opinion, so long as the legislature properly delegates the authority to promulgate and enforce rules and regulations to the Department, it could administer the Act. **County Cork, Inc. v. Nebraska Liquor Control Com'n**, 250 Neb. 456, 459, 550 N.W.2d 913, 916 (1996). In delegating administrative authority, the Nebraska Supreme Court has stated that: "The limitations of the powers granted and the standards by which the granted powers are to be administered must, however, be clearly and definitely stated in the authorizing act." **Lincoln Dairy Co. v Finigan**, 170 Neb. 777, 104 N.W.2d 227 (1960).

The amount of authority which the Department and the Board would have is dependent upon the existence of a federal pork assessment scheme. If the U.S. Secretary of Agriculture, through the National Pork Board, is the entity which will be collecting assessments from Nebraska pork producers, then it appears, under the current Act, the Board would be the recipient of funds. 7 U.S.C. § 4803. If the Act were amended as suggested herein, the Department would be the likely recipient. The federal statutes require that the entity receiving the funds from assessments be the Governor-designated state association, be an organization organized under Nebraska law, and be recognized as representing the pork producers of Nebraska. 7 U.S.C. § 4802(16). It appears that either the Department or the Board could be the recipient of the funds. The Board, if it were the assessment recipient, would not have the authority to assess checkoff funds under the Pork Promotion, Research and Consumer Information Act itself. That authority rests solely with the Secretary of Agriculture. 7 U.S.C. § 4803. The Secretary of Agriculture or the U.S. Attorney General would be responsible for enforcing the payment of assessments by Nebraska pork producers. 7 U.S.C. § 4815.

Since the authority rests with the Secretary of Agriculture to collect assessments, it would appear that the fund management and disbursement provisions of LB 803 would be utilized by the Board, much like similar federal rules are utilized by the Nebraska Pork Producers Association currently. The Act must comply with and follow the federal statute and regulations, as any conflicts would result in the Act being partially or totally preempted. In describing the Supremacy Clause of the US Constitution, U.S. Const., art. VI, cl. 2, the Supreme Court has stated: "Federal preemption of state law may be either express or implied, and 'is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.'" **Gade v. National Solid Wastes Management Ass'n**, 505 U.S. 88, 98, 112 S. Ct. 2374, 120 L. Ed. 2d 73

(1992). In effect, the Board may receive the checkoff funds in compliance with U.S.C. § 4801 et. seq. and expend those funds in compliance with the federal scheme and LB 803 requirements.

If the Secretary of Agriculture, or any other federal agency, no longer assesses pork checkoff funds from producers under a federal program, then the Act's assessment provisions appear to come into effect. LB 803 §§ 10 to 16. At that time, the Board would have the authority and responsibility of assessing and collecting check-off funds from producers under the Act. LB 803 §§ 9 & 12. However, as stated above, the Board, as a private nonprofit corporation, would have no authority to enforce violations of LB 803. Further, we believe the legislature's granting of assessment authority to a nonprofit corporation, through the delegation of rule making authority, is an unconstitutional delegation of power.

If LB 803 is amended to allow the Department or any other state agency to be the entity responsible for assessment and collection of checkoff funds from producers, upon the termination of such federal assessment, in our opinion the problems described above would be eliminated. We are aware of no legal prohibition precluding the legislature from authorizing the Department or other state agency to contract with the recognized state pork association to receive, disburse, and otherwise manage checkoff funds the Department or another agency had collected. Any such contract would have to comply with the Act, and with any regulations promulgated by the administering state agency. The Board would have the authority, under contract and the regulatory supervision of the the administering state agency, to properly manage and expend the checkoff funds collected.

III. CONCLUSION

The Act provides for the Board, a nonprofit corporation, to be the recognized state association for pork producers. The Act grants the Board the authority to assess and collect checkoff funds from Nebraska pork producers, by rule and regulation. This grant of authority to the Board is, in our opinion, an unconstitutional delegation of authority to a private entity which is not a state agency. Further, any rules or regulations purportedly promulgated by the Board would be unenforceable and void.

Under the current federal assessment scheme, the Secretary of Agriculture is responsible for assessing and collecting the checkoff funds from Nebraska pork producers. The Board could be the recognized state association receiving funds from the federal program under the Act, but would derive virtually all of its authority from the federal act and regulations. The Department could also be the recipient of checkoff funds under the federal act, and could properly promulgate rules and regulations to administer those funds. If the federal assessment scheme ended, then a state checkoff scheme could be approved under the Act. Although, in our opinion, the Board is not able to promulgate rules and regulations to enforce a state checkoff assessment, it is possible that the legislature could grant a state agency the

authority to collect and assess checkoff funds from pork producers. The legislature could authorize the transfer of funds to the Board for management and disbursement, under the supervision of the designated agency.

Sincerely,
DON STENBERG
Attorney General
(Signed) William R. Barger
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature
14-189-TM

Opinion #02001

DATE: January 3, 2002

SUBJECT: Impact of Passage of Initiative Petition Measures
Proposing to Amend the Nebraska Constitution to
Authorize Video or Electronic Gambling devices

REQUESTED BY: Senator Ray Janssen
Nebraska Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion concerning the effect of passage of two initiative measures which propose to amend the Nebraska Constitution to authorize the use of video or electronic gambling devices. The first petition, filed with the Secretary of State on November 6, 2001, proposes to amend the Nebraska Constitution to add a new section 25 to Article XV which, if approved, would create the "Nebraska Video and Electronic Gaming Commission" [the "Commission"]. The Commission, appointed by the Governor with approval of a majority of the Legislature, would be empowered "to establish policy for the conduct of video and electronic gaming in the State of Nebraska." Under the initiative, "video and electronic gaming devices" could only be authorized "on premises licensed to sell alcoholic liquor for consumption on the premises. . . ." "No more than ten video and electronic gaming devices [could] be placed in any licensed location." The second petition, filed with the Secretary of State on December 26, 2001, proposes to add a new article to the Nebraska Constitution providing that "any community may establish and conduct gaming using player activated electronic gaming devices. . . ." This initiative provides for the creation of a "gaming commission" to regulate such gambling, which would be allowed "only on premises which are licensed to sell alcoholic liquor for consumption on the premises and shall be conducted

only by [licensed] persons and entities. . . ." "Player activated electronic gaming devices" is defined as "all forms of gaming devices where the element of chance is a product of a computer process running contemporaneously with the play and where the game is activated by the player or players thereof."

Initially, you request advice on the effect of passage of either of these initiatives "on the allowance of Class III gaming in general," and whether, if adopted, "Class III gaming [would] be allowed in its entirety in the state?" The term "Class III gaming" is contained in the federal statutory scheme governing the conduct of Indian gaming known as the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 ["IGRA" or the "Act"]. IGRA divides gaming into three classes: (1) "class I gaming," which includes social gaming for minimal prizes and traditional gaming conducted at tribal ceremonies or celebrations; (2) "class II gaming," which is defined to include "the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) . . . including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo . . . "; and (3) "class III gaming," which "means all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. § 2703(6)-(8). Class I gaming on Indian lands is within the jurisdiction of the tribes and is not subject to the Act. *Id.* § 2710(a)(1). Class II gaming is within the jurisdiction of the tribes if "such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization, or entity . . . " and is authorized by a tribal ordinance or resolution, subject to the provisions of the IGRA and oversight by the National Indian Gaming Commission. *Id.* § 2710(a)(2), (b)(1)(A), (B). Class III gaming activities are "lawful on Indian lands only if such activities are" authorized by a tribal ordinance or resolution, "located in a State that permits such gaming for any purpose by any person, organization, or entity," and "conducted in conformance with a Tribal-State compact entered into by the Indian Tribe and the State. . . ." *Id.* at § 2710(d)(1)(A)-(C).

"Class III gaming" is a term defined in the IGRA. The IGRA governs the conduct of gaming by Indian tribes on Indian lands. Apart from the conduct of gaming by Indian tribes on Indian lands, the term "Class III gaming" has no relevance to the conduct of gaming activities in the State of Nebraska. Thus, in response to your initial question, we conclude that passage of either of the initiative amendments would not allow "Class III gaming" in the State "in its entirety," as the term "Class III gaming" has no application to the conduct of gaming in Nebraska apart from gaming conducted by Indian tribes on Indian lands under the provisions of the IGRA.

Your second question concerns the effect of passage of the proposed constitutional amendments allowing video or electronic gambling "on the legality of these types of gaming on Native American land. . . ." The first initiative measure would authorize the use of "video or electronic gaming devices" throughout Nebraska "on premises licensed to sell alcoholic liquor

for consumption on the premises. . . ." The second initiative would allow communities to "establish and conduct gaming using player activated electronic gaming devices," provided such gaming is "conducted only on premises which are licensed to sell alcoholic liquor for consumption on the premises" by licensed persons or entities. The video or player activated electronic gaming devices the initiatives propose to authorize would constitute Class III gaming as defined in the IGRA. Pursuant to the IGRA, an Indian tribe must, prior to engaging in Class III gaming, negotiate a compact with the State governing the conduct of such gaming. 25 U.S.C. § 2710(d)(1); *See also* Neb. Rev. Stat. § 9-1,106 (1996)(authorizing the Governor, or his or her designated representative, to negotiate compacts with Indian Tribes for the conduct of Class III gaming as defined in the IGRA).

The State has consistently taken the position that the IGRA requires the State to negotiate a compact only for the conduct of those specific types of Class III gaming which the State "permits" to be conducted "for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B). The State's view that only those specific forms of Class III gaming which are permitted under Nebraska law are subject to negotiation is consistent with decisions of both the Eighth Circuit Court of Appeals and the Ninth Circuit Court of Appeals. *United States v. Santee Sioux Tribe of Nebraska*, 135 F.3d 558 (8th Cir.), *cert. denied* 525 U.S. 813, 119 S. Ct. 48, 142 L. Ed. 2d 37 (1998); *Cheyenne River Sioux Tribe v. State of South Dakota*, 3 F.3d 273 (8th Cir. 1993); *Rumsey Indian Rancheria of Wintum Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994), *amended on denial of rehearing and rejection of suggestion for rehearing en banc* 64 F.3d 1250, 1258 (1995), *cert. denied sub nom Sycuan Band of Mission Indians v. Wilson*, 521 U.S. 1118, 117 S. Ct. 2508 (1997); *Coeur D'Alene Tribe v. State of Idaho*, 51 F.3d 876 (9th Cir. 1995).

Should one or both of the proposed initiative measures garner sufficient valid signatures to be placed on the ballot, and obtain voter approval, the Nebraska Constitution would be amended to authorize gambling activity involving the use of certain "video or electronic gaming devices" or "player activated electronic gaming devices. To the extent such devices involve forms of Class III gaming as defined in the IGRA, an Indian tribe could request the State to negotiate a compact for the conduct of the new specific forms of Class III gaming activity permitted as a result of adoption of one or both initiatives.

Very truly yours,
DON STENBERG
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

pc: Patrick O'Donnell
Clerk of the Legislature

07-365-18

REPORTS

The following reports were received by the Legislature:

Administrative Services, Department of

Comprehensive Annual Financial Report

Progress Report on Wireless Communication System

Agriculture, Department of

Agricultural Opportunities and Value-Added Partnerships Act - Annual Report

Beginning Farmer Tax Credit Act - Second Annual Report, July 2000-June 2001

Legislative Program Evaluation Committee Final Report - State Board of Agriculture (State Fair Board)

Auditor of Public Accounts

NE Department of Correctional Services Cornhusker State Industries - FY 2001

NE Department of Correctional Services - FY 2001

NE Dairy Industry Development Board - FY 2001

NE Lottery - FY 2001

NE State Patrol - FY 2001

NE Workers' Compensation Court - FY 2001

Advisory Letter of the NE Health and Human Services System - Payroll Disbursements - FY 2001

Attestation Examination Report for the NE Department of Environmental Quality - June 30, 2001

Advisory Letter of the NE Health and Human Services System - State wards' Guardianship Accounts - FY 2001

University of Nebraska performed by Deloitte & Touche - FY 2001

Blind and Visually Impaired, Nebraska Commission for the

Annual Report ending December 31, 2001

Education, Department of

Nebraska School Finance Review Committee Resolutions

Environmental Quality, Department of

Availability of Insurance Coverage for Underground Petroleum Storage Tanks Report

Environmental Trust Board, Nebraska

Legislative Program Evaluation Committee Final Report

Fire Marshal, State

Volunteer Emergency Responders Recruitment and Retention Act

Game and Parks Commission

2001 Recreation Road Report

Health and Human Services System

2001 Report on LB 808 on Cost Sharing in the Medicaid Program

Insurance, Department of

Availability of Insurance Coverage for Underground Petroleum Storage Tanks Report

Interstate Insurance Receivership Commission - 2000 Annual Report

Investment Council

Northern Ireland Investment Requirements under LB 1066

Investment Finance Authority, Nebraska

2001 Series D, E & F Single Family Housing Revenue Bonds

2001 Series G.O.-13 General Obligation Bonds

Drinking Water State Revolving Fund Program

Wastewater Treatment Facilities (Clean Water) State Revolving Fund Program

Legislative Fiscal Office

Special Session Budget Actions

Legislative Program Evaluation Committee

Legislative Program Evaluation Committee Annual Report to the Legislature, Fiscal Year 2000-2001

Legislative Program Evaluation Committee Final Report - NE Environmental Trust Board

Legislative Program Evaluation Committee Final Report - State Board of Agriculture (State Fair Board)

Liquor Control Commission

Report concerning effectiveness of keg registration legislation

Natural Resources, Department of

Recommendations of the Carbon Sequestration Advisory Committee Report

Parole Board

Annual Report - July 1, 2000 to June 30, 2001

Public Counsel

Annual Report - Year 2000

Retirement Systems, Public Employees

Actuarial Reports for State Fiscal Year Ending June 30, 2003, and System Plan Year Beginning July 1, 2001 for the following:

NPERS Judges Retirement System

NPERS School Retirement System

NPERS State Patrol Retirement System

Revenue, Nebraska Department of

Re-certification of General Fund net receipts for fiscal year beginning July 1, 2001. Monthly receipt estimates derived from the annual net receipt estimate of the Nebraska Economic Forecasting Advisory Board produced October 19, 2001. (Prepared jointly by the Department of Revenue and Legislative Fiscal Analyst)

Roads, Department of

2001 State Highway Needs Assessment

Board of Public Roads Classifications and Standards Minutes for September 2001 and October 2001.

Recreation Roads One-Year and Five-Year Programs

Southeast Community College

Annual report on the financial condition of the Center for Excellence in Electronics, funding received from nonstate sources, training conducted, and testing and evaluation services provided

Tax Research Council, Inc., Nebraska

Task Force on Teacher Shortages in Nebraska Report - December 2001

University of Nebraska

Increasing Minority and Women Faculty Progress Report

EXECUTIVE BOARD ANNOUNCEMENT

The Executive Board announces the following committee changes made over the interim:

Senator Bourne has been appointed to fill the vacancy on the Appropriations Committee and no longer serves on the Banking, Commerce and Insurance Committee and Judiciary Committee.

Senator Brashear has been appointed to fill the vacancy on the Committee on Committees.

Senator Thompson has been appointed to fill the vacancy on the Building Maintenance Committee.

Senator Quandahl has been appointed to the Banking, Commerce and Insurance Committee and Judiciary Committee and no longer serves on the General Affairs Committee, Government, Military and Veterans Affairs Committee, and Urban Affairs Committee.

Senator Synowiecki has been appointed to the General Affairs Committee, Government, Military and Veterans Affairs Committee, and Urban Affairs Committee.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 857. Introduced by Executive Board: Coordsen, 32, Chairperson.

A BILL FOR AN ACT relating to banking and finance; to amend sections 8-1109.01, 8-1508, 8-1511, 76-882, and 87-301, Reissue Revised Statutes of Nebraska, and section 8-1401, Revised Statutes Supplement, 2000; to update statutory references; and to repeal the original sections.

LEGISLATIVE BILL 858. Introduced by Executive Board: Coordsen, 32, Chairperson.

A BILL FOR AN ACT relating to the Department of Agriculture; to amend sections 54-1412 and 54-1413, Reissue Revised Statutes of Nebraska; to transfer sections dealing with domestic animals; to provide a duty for the Revisor of Statutes; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 859. Introduced by Executive Board: Coordsen, 32, Chairperson.

A BILL FOR AN ACT relating to the Department of Economic

Development; to repeal provisions which terminated on June 30, 1999; and to outright repeal sections 81-1288 to 81-1294, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 860. Introduced by Executive Board: Coordsen, 32, Chairperson.

A BILL FOR AN ACT relating to cities of the first class; to amend section 16-716, Revised Statutes Supplement, 2001; to harmonize provisions relating to deposits; and to repeal the original section.

LEGISLATIVE BILL 861. Introduced by Kristensen, 37.

A BILL FOR AN ACT relating to the Commission on Public Advocacy; to amend section 29-3920, Reissue Revised Statutes of Nebraska, section 81-1316, Revised Statutes Supplement, 2000, and sections 13-518, 29-3921, 29-3927, 29-3931, 29-3932, 29-3933, 29-4121, and 29-4122, Revised Statutes Supplement, 2001; to rename a fund; to change provisions relating to reimbursements to counties and commission personnel; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 862. Introduced by Byars, 30.

A BILL FOR AN ACT relating to funeral directors and embalming; to amend section 71-1340, Reissue Revised Statutes of Nebraska, and sections 71-1301 and 71-1339, Revised Statutes Supplement, 2000; to adopt the Cremation of Human Remains Act; to change provisions relating to interment, cremation, and the disposition of remains as prescribed; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 863. Introduced by Byars, 30.

A BILL FOR AN ACT relating to real estate; to amend sections 76-2,120, 76-2403, 76-2407, 76-2417 to 76-2419, 76-2421, 76-2422, 76-2426, 81-885.03, 81-885.12, 81-885.13, 81-885.17 to 81-885.19, 81-885.24, 81-885.29, 81-885.33, 81-885.34, 81-885.40, 81-885.45, and 81-885.51 to 81-885.53, Reissue Revised Statutes of Nebraska, and sections 81-885.01, 81-885.11, and 81-885.21, Revised Statutes Supplement, 2000; to change provisions relating to real estate disclosure statements and regulation and licensure of real estate professionals; and to repeal the original sections.

LEGISLATIVE BILL 864. Introduced by Bruning, 3.

A BILL FOR AN ACT relating to the Public Accountancy Act; to amend sections 1-119, 1-120, 1-124, 1-135, and 1-136, Reissue Revised Statutes of Nebraska; to change provisions relating to fees; and to repeal the original sections.

LEGISLATIVE BILL 865. Introduced by Bruning, 3.

A BILL FOR AN ACT relating to the death penalty; to amend sections 29-2532, 29-2533, 29-2542, and 29-2543, Reissue Revised Statutes of Nebraska; to change the method of inflicting the death penalty as prescribed; to provide duties; to harmonize provisions; to provide severability; and to repeal the original sections.

LEGISLATIVE BILL 866. Introduced by Bruning, 3.

A BILL FOR AN ACT relating to public records; to amend section 32-331, Reissue Revised Statutes of Nebraska; to adopt the Safe at Home Act; to provide for confidentiality of certain voting records; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 867. Introduced by Vrtiska, 1.

A BILL FOR AN ACT relating to motor vehicle registration; to amend sections 60-108, 60-117, 60-305.04, 60-310, 60-311.03, 60-311.04, 60-311.05, 60-311.08, 60-311.09, 60-311.12, 60-311.13, 60-311.16, 60-311.21, 60-311.25, 60-320, 60-321, 60-323, 60-324, 60-331, 60-331.03, 60-334, 60-345, 60-683, 60-1306, and 81-2005, Reissue Revised Statutes of Nebraska, sections 60-304, 60-305.16, 60-311, 60-311.02, 60-311.14, 60-311.23, 60-315.01, 60-335, 60-1901, 60-1902, 60-1903, and 60-1908, Revised Statutes Supplement, 2000, and sections 18-1736, 18-1737, 60-301, and 60-315, Revised Statutes Supplement, 2001; to provide for one license plate and In Transit decal per vehicle; to change provisions relating to license plates; to harmonize provisions; to provide an operative date; and to repeal the original sections.

LEGISLATIVE BILL 868. Introduced by Schimek, 27.

A BILL FOR AN ACT relating to the Department of Administrative Services; to require progress reports on the Nebraska Information System.

LEGISLATIVE BILL 869. Introduced by Schimek, 27; Wehrbein, 2.

A BILL FOR AN ACT relating to the Nebraska Lewis and Clark Bicentennial Commission; to amend section 81-8,307, Revised Statutes Supplement, 2000; to eliminate a duty; and to repeal the original section.

LEGISLATIVE BILL 870. Introduced by Schimek, 27; Redfield, 12.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Supplement, 2001; to prohibit the printing of payment card numbers as prescribed; to prohibit the use of scanning devices or reencoders as prescribed; to provide penalties; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 871. Introduced by Schimek, 27.

A BILL FOR AN ACT relating to real estate; to amend sections 76-2,120 and 81-885.55, Reissue Revised Statutes of Nebraska; to change provisions relating to disclosure statements and errors and omissions insurance; and to repeal the original sections.

LEGISLATIVE BILL 872. Introduced by Schimek, 27.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Supplement, 2000; to provide a penalty for leaving a child unattended in a motor vehicle as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 873. Introduced by Cudaback, 36.

A BILL FOR AN ACT relating to the State Electrical Act; to amend section 81-2104, Reissue Revised Statutes of Nebraska; to adopt the 2002 National Electrical Code; and to repeal the original section.

LEGISLATIVE BILL 874. Introduced by Brashear, 4.

A BILL FOR AN ACT relating to courts; to amend sections 25-2221 and 48-191, Reissue Revised Statutes of Nebraska; to change holiday schedules as prescribed; and to repeal the original sections.

LEGISLATIVE BILL 875. Introduced by Brashear, 4.

A BILL FOR AN ACT relating to courts; to amend section 24-209, Reissue Revised Statutes of Nebraska; to change distribution of court reports; and to repeal the original section.

LEGISLATIVE BILL 876. Introduced by Brashear, 4.

A BILL FOR AN ACT relating to civil procedure; to amend sections 25-217, 25-318, 25-321, 25-323, 25-328, 25-330, 25-331, 25-501, 25-503.01, 25-504.01, 25-516.01, 25-531, 25-818, 25-819, 25-1002, 25-1063, 25-1064.01, 25-1075, 25-1085, 25-1102, 25-1321, 25-1715, 25-2005, 25-2124, 25-2125, 25-2137 to 25-2140, 25-2142, 25-2143, 25-2148, 25-2162, 25-2170, 25-2171, 25-2178, 25-21,108, 25-21,113, 25-21,115, 25-21,124, 25-21,134, 25-21,156, 25-21,202, 25-21,206, 25-21,223, 25-2210, 25-2226, 44-2833, 44-2840, 44-2841, 44-2842, 76-1441, 76-1442, 77-1904, and 77-1906, Reissue Revised Statutes of Nebraska, and sections 25-519, 25-525, 25-1506, 25-2002, 25-2704, 25-2805, 60-4,105, and 77-1917, Revised Statutes Supplement, 2000; to change and eliminate general civil procedure pleadings provisions; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to outright repeal sections 25-801 to 25-817, 25-820 to 25-822, 25-833, 25-834, 25-842, 25-843, 25-849 to 25-851, 25-854, 25-856, 77-1905, and

77-1907, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 877. Introduced by Smith, 48.

A BILL FOR AN ACT relating to aeronautics; to amend sections 3-125.01 and 55-101, Reissue Revised Statutes of Nebraska; to change provisions relating to contracting with the Civil Air Patrol; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 878. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-1710 and 77-1734, Reissue Revised Statutes of Nebraska; to change provisions relating to tax lists; and to repeal the original sections.

LEGISLATIVE BILL 879. Introduced by Suttle, 10.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,225, Reissue Revised Statutes of Nebraska; to change provisions relating to auxiliary driving lights; and to repeal the original section.

LEGISLATIVE BILL 880. Introduced by Suttle, 10.

A BILL FOR AN ACT relating to teachers; to adopt the Teacher Tuition Reimbursement Program Act.

LEGISLATIVE BILL 881. Introduced by Suttle, 10.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-27,123, Reissue Revised Statutes of Nebraska; to change provisions relating to military service and deadlines; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 882. Introduced by Thompson, 14; Aguilar, 35.

A BILL FOR AN ACT relating to private detectives; to amend sections 71-3201 to 71-3204, 71-3207, and 71-3209 to 71-3213, Reissue Revised Statutes of Nebraska, and sections 60-2907 and 71-3205, Revised Statutes Supplement, 2000; to name the Private Detective Licensing Act; to define and redefine terms; to prohibit certain acts; to change licensure and renewal fees; to change appeal procedures; to create a board and a fund; to harmonize provisions; to provide an operative date; and to repeal the original sections.

LEGISLATIVE BILL 883. Introduced by Wickersham, 49; Erdman, 47; Smith, 48.

A BILL FOR AN ACT relating to motor vehicles; to amend section 60-115,

Reissue Revised Statutes of Nebraska, and sections 60-302 and 60-490, Revised Statutes Supplement, 2001; to authorize the charging of fees for insufficient funds or no-account financial transactions as prescribed by governmental entities; and to repeal the original sections.

LEGISLATIVE BILL 884. Introduced by Wickersham, 49; Erdman, 47; Smith, 48.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-1822 and 77-1836, Reissue Revised Statutes of Nebraska, and sections 18-2147 and 60-106, Revised Statutes Supplement, 2000; to provide for distribution of certain interest and penalties; to require proof of certain tax payment; to provide and change fees; and to repeal the original sections.

LEGISLATIVE BILL 885. Introduced by Wickersham, 49.

A BILL FOR AN ACT relating to corporations; to amend sections 21-301, 21-304, 21-306, 21-313, 21-323, and 21-325, Reissue Revised Statutes of Nebraska; to change provisions relating to annual reports and occupation taxes; to provide duties; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 886. Introduced by Wickersham, 49.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 76-902, Revised Statutes Supplement, 2001; to change provisions relating to the documentary stamp tax; and to repeal the original section.

LEGISLATIVE BILL 887. Introduced by Wickersham, 49.

A BILL FOR AN ACT relating to the Internal Revenue Code; to amend section 49-801.01, Revised Statutes Supplement, 2001; to change provisions relating to references to the code; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 888. Introduced by Wickersham, 49.

A BILL FOR AN ACT relating to the vehicle titling and registration computer system; to amend section 60-302.01, Reissue Revised Statutes of Nebraska, and section 44-523, Revised Statutes Supplement, 2001; to provide for the keeping of automobile liability insurance records in the system; to provide duties for insurers and the Department of Motor Vehicles; to eliminate obsolete language; and to repeal the original sections.

LEGISLATIVE BILL 889. Introduced by Schrock, 38.

A BILL FOR AN ACT relating to the Water Well Standards and Contractors' Licensing Board; to amend section 46-1217, Revised Statutes Supplement, 2000; to change provisions relating to membership; and to

repeal the original section.

LEGISLATIVE BILL 890. Introduced by Schrock, 38.

A BILL FOR AN ACT relating to water well registration; to amend section 46-606, Revised Statutes Supplement, 2001; to change provisions relating to fees; and to repeal the original section.

LEGISLATIVE BILL 891. Introduced by Kristensen, 37.

A BILL FOR AN ACT relating to the Nebraska Environmental Trust Act; to amend section 81-15,167, 81-15,170, and 81-15,175, Revised Statutes Supplement, 2000; to change provisions relating to administrative structure; to provide duties for board members; to change provisions relating to allocations; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 892. Introduced by Jensen, 20; Byars, 30.

A BILL FOR AN ACT relating to dentistry; to amend section 71-1,103, Revised Statutes Supplement, 2000, and sections 71-101, 71-183.02, and 71-193.16, Revised Statutes Supplement, 2001; to provide for faculty licenses; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 893. Introduced by Jensen, 20.

A BILL FOR AN ACT relating to schools; to amend section 77-3442, Revised Statutes Supplement, 2001; to change provisions relating to levy limits; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 894. Introduced by Jensen, 20.

A BILL FOR AN ACT relating to public health and welfare; to provide for disciplining certain professional licenses for failure to complete student loan obligations.

LEGISLATIVE BILL 895. Introduced by Schimek, 27.

A BILL FOR AN ACT relating to parole and probation; to amend sections 29-2250, 29-2254, 83-1,125, and 83-933, Reissue Revised Statutes of Nebraska; to adopt the Interstate Compact for Adult Offender Supervision; to eliminate a uniform act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 29-2637 and 29-2638, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 896. Introduced by Byars, 30; Cunningham, 18; Erdman, 47; Jensen, 20; Price, 26; Suttle, 10.

A BILL FOR AN ACT relating to respite care; to amend sections 71-415 and 71-432, Revised Statutes Supplement, 2000, and section 71-7611.04, Revised Statutes Supplement, 2001; to provide for the use of funds for

implementation of respite programs; to exclude respite care services from licensure requirements; to harmonize provisions; to repeal the original sections; and to outright repeal section 71-428, Revised Statutes Supplement, 2000.

LEGISLATIVE BILL 897. Introduced by Byars, 30.

A BILL FOR AN ACT relating to the Securities Act of Nebraska; to amend section 8-1103, Revised Statutes Supplement, 2001; to refund certain investment adviser and investment adviser representative fees as prescribed; and to repeal the original section.

LEGISLATIVE BILL 898. Introduced by Kristensen, 37.

A BILL FOR AN ACT relating to schools; to amend section 79-1015.01, Revised Statutes Supplement, 2001; to change provisions relating to state aid; and to repeal the original section.

LEGISLATIVE BILL 899. Introduced by Connealy, 16; Bruning, 3; Schrock, 38.

A BILL FOR AN ACT relating to motor fuel; to provide intent regarding fuel containing renewable fuel content; to provide duties for retailers of motor fuel and the Department of Revenue; to eliminate a provision relating to reformulated gasoline; to provide an operative date; and to outright repeal section 66-1225, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 900. Introduced by Landis, 46.

A BILL FOR AN ACT relating to the master lien list; to amend section 52-1601, Revised Statutes Supplement, 2000; to change provisions relating to the compiling of lien information; to harmonize provisions; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 901. Introduced by Landis, 46.

A BILL FOR AN ACT relating to decrees and judgments; to amend section 45-103, Revised Statutes Supplement, 2000; to change provisions relating to interest; and to repeal the original section.

LEGISLATIVE BILL 902. Introduced by D. Pederson, 42.

A BILL FOR AN ACT relating to hunting; to amend section 37-724, Revised Statutes Supplement, 2000; to provide for purple-paint posting of privately owned lands; and to repeal the original section.

LEGISLATIVE BILL 903. Introduced by Redfield, 12; Engel, 17; Quandahl, 31.

A BILL FOR AN ACT relating to interstate compacts; to adopt the Interstate Compact Sunshine Act.

LEGISLATIVE BILL 904. Introduced by Redfield, 12; Kristensen, 37.

A BILL FOR AN ACT relating to the Telemarketing and Prize Promotions Act; to amend section 86-2003, Reissue Revised Statutes of Nebraska; to change requirements for consumer's authorization of payment; and to repeal the original section.

LEGISLATIVE BILL 905. Introduced by Wickersham, 49; Coordsen, 32; D. Pederson, 42; Wehrbein, 2.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2101 to 77-2105, 77-2108, and 77-2113, Reissue Revised Statutes of Nebraska; to change calculations relating to estate taxes and generation-skipping transfer taxes; to harmonize provisions; to provide for applicability; to provide an operative date; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 906. Introduced by Wehrbein, 2.

A BILL FOR AN ACT relating to appropriations; to amend Laws 2001, LB 668A, section 1, and Laws 2001, LB 543, section 268, as amended by section 158, Legislative Bill 1, Ninety-seventh Legislature, First Special Session, 2001; to change transfers as prescribed; and to repeal the original sections.

LEGISLATIVE BILL 907. Introduced by Burling, 33; Redfield, 12.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2704.40, Reissue Revised Statutes of Nebraska; to change an exemption for molds, dies, and patterns from sales taxation; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 908. Introduced by Thompson, 14.

A BILL FOR AN ACT relating to sheriffs; to amend section 23-1723.01, Reissue Revised Statutes of Nebraska; to change sheriff's office merit commission membership provisions as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 909. Introduced by Schimek, 27; Janssen, 15.

A BILL FOR AN ACT relating to gambling; to amend section 9-1,106, Reissue Revised Statutes of Nebraska; to change provisions relating to tribal-state compacts; to state intent; to provide for legislative approval; to provide powers and duties; and to repeal the original section.

LEGISLATIVE BILL 910. Introduced by Smith, 48.

A BILL FOR AN ACT relating to real property; to state and change requirements for an action to quiet title based on adverse possession.

LEGISLATIVE BILL 911. Introduced by Dierks, 40; Cunningham, 18; Hartnett, 45; Jensen, 20; Thompson, 14.

A BILL FOR AN ACT relating to government; to create a preferred purchasing status for calcium-enriched products for governmental units.

LEGISLATIVE BILL 912. Introduced by Dierks, 40; Cunningham, 18; Wehrbein, 2.

A BILL FOR AN ACT relating to farm mediation; to amend sections 2-4808, 2-4812, and 2-4816, Reissue Revised Statutes of Nebraska; to include program disputes under mediation; to change the termination date; and to repeal the original sections.

LEGISLATIVE BILL 913. Introduced by Dierks, 40.

A BILL FOR AN ACT relating to game and parks; to amend section 37-524, Reissue Revised Statutes of Nebraska; to change importation and possession provisions relating to domesticated cervine animals; and to repeal the original section.

LEGISLATIVE BILL 914. Introduced by Dierks, 40.

A BILL FOR AN ACT relating to livestock; to amend sections 54-2238, 54-2244, 54-2254, 54-2277, 54-2280, 54-2287, 54-2289, 54-2290, 54-2296, and 54-2299, Reissue Revised Statutes of Nebraska; to change and eliminate certain pseudorabies control and eradication provisions; to repeal the original sections; to outright repeal sections 54-2261, 54-2282, 54-2284, and 54-2285, Reissue Revised Statutes of Nebraska; and to declare an emergency.

LEGISLATIVE BILL 915. Introduced by Dierks, 40.

A BILL FOR AN ACT relating to the Weights and Measures Act; to amend sections 89-183, 89-185, 89-186, and 89-188, Reissue Revised Statutes of Nebraska, and section 89-187, Revised Statutes Supplement, 2001; to redefine a term; to change provisions relating to handbooks, certificates, and fees; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 916. Introduced by Dierks, 40.

A BILL FOR AN ACT relating to food regulation; to amend section 2-3517, Reissue Revised Statutes of Nebraska, and sections 81-2,239, 81-2,240, 81-2,244.01, 81-2,245.01, 81-2,257, 81-2,270, 81-2,272.09, 81-2,272.19,

81-2,272.20, 81-2,272.21, 81-2,272.23, 81-2,272.24, 81-2,272.25, 81-2,272.27, and 81-2,272.28, Revised Statutes Supplement, 2000; to change provisions of the Nebraska Pure Food Act and the Nebraska Graded Egg Act; to provide an exception; to define and redefine terms; to change and eliminate food handling and preparation requirements and fees; to harmonize provisions; to repeal the original sections; and to outright repeal sections 81-2,270.01, 81-2,272.07, 81-2,272.11, 81-2,272.13, 81-2,272.18, and 81-2,272.30, Revised Statutes Supplement, 2000.

LEGISLATIVE BILL 917. Introduced by Transportation and Telecommunications Committee: Bromm, 23, Chairperson; Baker, 44; Brown, 6; Byars, 30; Hudkins, 21; Jones, 43; Dw. Pedersen, 39.

A BILL FOR AN ACT relating to telecommunications and technology; to amend sections 2-3917.02, 25-2503, 28-711, 28-1310, 43-158, 70-301, 75-101, 75-128, 75-133, 75-155, 75-605, 75-607, 75-608, 75-611 to 75-616, 76-2301, 76-2321, 81-1117, 81-1120.17, 81-1120.19, 81-1190 to 81-1192, 81-1576, 81-1849, 81-2301 to 81-2303, 81-2305, 81-2306, 81-2308, 81-2309 to 81-2313, 81-2601, 81-2603 to 81-2605, 86-101 to 86-107, 86-109, 86-111, 86-112, 86-208 to 86-211, 86-301 to 86-309, 86-329 to 86-331.04, 86-334 to 86-338, 86-401 to 86-412, 86-502, 86-601, 86-701 to 86-712, 86-801, 86-802, 86-805 to 86-807, 86-809, 86-810, 86-1001 to 86-1004, 86-1006 to 86-1009, 86-1101 to 86-1109, 86-1201 to 86-1218, 86-1221, 86-1301 to 86-1305, 86-1307, 86-1401, 86-1402, 86-1404, 86-1406 to 86-1410, 86-1501 to 86-1514, 86-1601 to 86-1606, 86-1803 to 86-1811, 86-1901 to 86-1904, 86-1906, 86-1910, 86-1911, 86-2002 to 86-2007, and 86-2009 to 86-2013, Reissue Revised Statutes of Nebraska, sections 2-1570, 25-2602.01, 49-14.141, 52-1307, 52-1314, 75-109, 75-122.01, 75-134, 75-156, 75-606, 75-609 to 75-610, 75-617, 79-1327, 81-1120.35 to 81-1120.38, 81-1120.40, 81-1194, 81-1195, 81-1196.01, 81-1199, 81-11.102, 81-2304, 81-2307, 81-2308.01, 81-2602, 86-803, 86-811, 86-1005, 86-1110, 86-1111, 86-1219, 86-1222, 86-1306, 86-1701, and 86-2101 to 86-2116, Revised Statutes Supplement, 2000, sections 18-419, 28-401, 70-625, 70-704, 70-1409, 71-1.142, 75-132.01, 75-604, 79-215, 79-1241.02, 79-1328, 86-804, 86-808, 86-1403, 86-1405, 86-1905, 86-1907 to 86-1909, 86-2001, 86-2008, 86-2014, 86-2201 to 86-2214, and 86-2301 to 86-2307, Revised Statutes Supplement, 2001, and section 9-812, Revised Statutes Supplement, 2001, as amended by section 1, Legislative Bill 3, Ninety-seventh Legislature, First Special Session, 2001; to reorganize statutory provisions relating to telecommunications and technology; to transfer, combine, and eliminate sections; to eliminate obsolete and expired provisions and penalties; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide operative dates; to repeal the original sections; and to outright repeal sections 86-108, 86-110, 86-113, 86-201, 86-202, 86-203, 86-503, 86-602, 86-603, and 86-1220, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 918. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to transportation and telecommunications; to amend sections 28-515, 70-301, 75-117, 86-306, 86-307, and 86-329, Reissue Revised Statutes of Nebraska, section 75-137, Revised Statutes Supplement, 2000, and section 75-132.01, Revised Statutes Supplement, 2001; to state the subject matter jurisdiction and enforcement of the Public Service Commission; to change the terminology for certain motions before the Public Service Commission; to provide, transfer, change, and eliminate penalties; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide an operative date; to repeal the original sections; and to outright repeal sections 86-208 to 86-211, 86-330, and 86-331, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 919. Introduced by Agriculture Committee: Dierks, 40, Chairperson; Burling, 33; Cunningham, 18; Erdman, 47; Schimek, 27; Schrock, 38; Vrtiska, 1.

A BILL FOR AN ACT relating to livestock; to amend sections 54-2302 and 54-2305, Revised Statutes Supplement, 2000; to change provisions of the Domesticated Cervine Animal Act; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 920. Introduced by Burling, 33; Baker, 44.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2701, Revised Statutes Supplement, 2001; to exempt machine tools from sales and use taxes; to harmonize provisions; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 921. Introduced by Business and Labor Committee: Connealy, 16, Chairperson; Dierks, 40; Hartnett, 45; Preister, 5; Schimek, 27.

A BILL FOR AN ACT relating to the Employment Security Law; to amend section 48-648, Reissue Revised Statutes of Nebraska, and sections 48-602 and 48-628, Revised Statutes Supplement, 2001; to define terms; to provide for professional employer organization treatment and eliminate employee leasing company references; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 922. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to motor vehicle title applications; to amend section 60-106, Revised Statutes Supplement, 2000; to authorize the acceptance of valid out-of-state motor vehicle titles as prescribed; and to repeal the original section.

LEGISLATIVE BILL 923. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to aeronautics; to amend sections 3-129, 3-133, and 3-157, Reissue Revised Statutes of Nebraska; to eliminate a provision relating to requirements for airmen; to change provisions relating to airports, landing areas, and facilities; to eliminate a reappraisal requirement for certain property of the Department of Aeronautics; and to repeal the original sections.

LEGISLATIVE BILL 924. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to motor vehicle operators' licenses; to amend sections 60-484.02, 60-4,117, 60-4,151, 60-4,180, and 60-4,181, Revised Statutes Supplement, 2001; to provide for biometric identifiers; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 925. Introduced by Bromm, 23.

A BILL FOR AN ACT relating to motor vehicle industry licensing; to amend section 60-1417.01, Revised Statutes Supplement, 2000; to change provisions relating to auction dealers; and to repeal the original section.

LEGISLATIVE BILL 926. Introduced by Schimek, 27.

A BILL FOR AN ACT relating to domestic violence; to amend section 32-331, Reissue Revised Statutes of Nebraska, and sections 60-484, 60-4,144, and 60-4,181, Revised Statutes Supplement, 2001; to adopt the Address Confidentiality Act; to change provisions relating to absentee voter and motor vehicle operator's license address confidentiality; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 927. Introduced by D. Pederson, 42.

A BILL FOR AN ACT relating to real property; to amend section 76-1002, Revised Statutes Supplement, 2000; to change provisions relating to trust deeds; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 928. Introduced by Vrtiska, 1; Baker, 44; Byars, 30; Cudaback, 36; Janssen, 15; Jones, 43; Schimek, 27; Smith, 48; Wehrbein, 2.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-1601, Revised Statutes Supplement, 2000; to change provisions relating to levy; and to repeal the original section.

UNANIMOUS CONSENT - Add Cointroducers

Senator Robak asked unanimous consent to have her name added as cointroducer to LB 72, LB 74, LB 231, LB 452, LB 453, LB 816, and LB 824. No objections. So ordered.

Senator Preister asked unanimous consent to have his name added as

cointroducer to LB 153. No objections. So ordered.

RESOLUTION

LEGISLATIVE RESOLUTION 276. Introduced by D. Pederson, 42.

WHEREAS, Beth Dodson, Leslie Steinbeck, Bethany Nichelson, and Jess Schneider are to be commended for the successful rescue of an injured Fremont diver; and

WHEREAS, these students demonstrated bravery, dedication, and remarkable composure while reacting quickly and without concern for their own safety; and

WHEREAS, by having learned the value of tenacity, hard work, and practice in their training as lifeguards these attributes assisted them in avoiding a possible fatal situation; and

WHEREAS, such team achievement is made possible not only by the individual members' performance, but also by the leadership and guidance provided to them by their coach, Jon Beggs.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and congratulates these four North Platte swimmers and their coach.

2. That the State of Nebraska recognizes, thanks, and honors these students for their generous compassion, dedication, and act of bravery.

3. That a copy of this resolution be sent to each student and their coach.

Laid over.

AMENDMENTS - Print in Journal

Senator Foley filed the following amendment to LB 824:
AM2243

- 1 1. On page 2, line 3, strike the new matter and
- 2 reinstate the stricken matter and after the period insert "(1)".

Senator Foley filed the following amendment to LB 824:
AM2244

- 1 1. On page 2, line 17, strike "gestation" and insert
- 2 "development".

Senator Foley filed the following amendment to LB 824:
AM2245

- 1 1. On page 2, line 19, strike "Committed" and insert
- 2 "Performed".

UNANIMOUS CONSENT - Unbracket LB 273

Senator Schrock asked unanimous consent to unbracket LB 273. No objections. So ordered.

VISITORS

Visitors to the Chamber were Senator Connealy's wife, Judith, from Decatur, and Dan Hansen and Todd Trimpe from Dana College, Blair; and Kim Herek and Jerri Nordell from Valley.

The Doctor of the Day was Dr. Ron Klutman from Columbus.

ADJOURNMENT

At 11:26 a.m., on a motion by Speaker Kristensen, the Legislature adjourned until 10:00 a.m., Thursday, January 10, 2002.

Patrick J. O'Donnell
Clerk of the Legislature